

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6119 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KHUSHALDAS SEVADAS DEVMURARI

Versus

STATE OF GUJARAT

Appearance:

MR BD KARIA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 17/12/96

ORAL JUDGEMENT

The petitioner who is accused for the offences under Sections 8 and 20(1)(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985, has filed this application for releasing him on bail in respect of these offences registered at Crime Register No. 338/96 of the Mahuva Police Station, Bhavnagar.

In the FIR lodged on 30.11.1996, it was alleged that on 30.11.1996 at about 8.10 P.M the raiding party had gone on the basis of information, to the house of the petitioner and they had seized the ganja plantation from

his courtyard under a panchnama. Twenty six plants of ganja were found in his courtyard and they were uprooted and seized. The FIR was lodged on the same date at 10.30 P.M.

The petitioner made an application for obtaining bail in the Court of Sessions Court and the learned Additional Sessions Court, camping at Mahuva, by his order dated 7.12.1996 rejected his application on the ground that the allegations made in the complaint were prima-facie supported by the statement of various witnesses recorded during the investigation and it appeared that the raiding party had gone to the house of the petitioner and from the courtyard of his house they had seized the plants of ganja under a panchnama. The learned Additional Sessions Judge also considered the certificate produced by the petitioner, which was obtained from Panchayat, to show that the petitioner was residing in the house of Bhatt Hariprasad Shambuprasad, but observed that it was not known as to for on what basis the certificate was issued and that in view of the fact that from the statements and panchnama it transpired that the plants of ganja were seized from the conscious possession of the petitioner, the said certificate could not be relied upon at this stage.

The learned Counsel appearing for the petitioner contended that the offence which is levelled against the petitioner related to 'ganja', which was punishable under Section 20(b)(i) for a term which may extend to 5 years and fine that may extend to 50,000 rupees and therefore, the restrictions against granting of bail put under Section 37 of the said Act were not applicable in the case of the petitioner. It was contended that under Section 37(1)(b) of the said Act, it was provided that "..... no person accused of an offence punishable for a term of imprisonment of 5 years or more under this Act shall be released on bail". According to him in the present case the offence alleged, related to ganja and was punishable for a term upto 5 years and not 5 years or more.

Under Section 37(1)(b), it is provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of 5 years or more under the Act, shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and where he opposes the application, the Court is satisfied that there are reasonable grounds for believing

that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The expression "offence punishable for a term of imprisonment of 5 years or more" occurring in clause (b) of Section 37(1) would include even the offences where the maximum punishment of imprisonment is 5 years. Where the maximum punishment of imprisonment is 5 years as in the case falling under Section 20(b)(i), that offence would also be an offence punishable for a term of 5 years imprisonment. The provision of Section 37(1)(b) will not apply only to the offences which would be punishable for a term of imprisonment of less than 5 years. The moment 5 years term is prescribed, that offence would fall under the said provision alongwith other offences where term of imprisonment of more than 5 years is prescribed. There are offences under Section 26 and 27 of the said Act for which lesser term of 3 years, 1 year or even six months has been prescribed. Those are the offences in respect of which it can be contended that Section 37(1)(b) would not apply. There is therefore, no substance in the contention canvassed on behalf of the petitioner that the petitioner's case will not be covered by Section 37 of the said Act and therefore, he should be released on bail.

The next contention canvassed on behalf of the petitioner was that nothing was found from the possession of the petitioner inasmuch as he was not residing in the house from the courtyard of which the said ganja plants were recovered. The learned Counsel placed strong reliance on a certificate issued by the Panchayat to show that the petitioner was staying elsewhere, in the house of Hariprasad Bhatt. The learned Additional Sessions Judge, as noted above, has taken into account this aspect and showed his inability to accept the certificate in view of the panchnama and statements of various witnesses which went to show that the raiding party had gone to the house of the petitioner and that from the courtyard of his house the offending material was seized. It is not possible from the facts so far disclosed, to hold that there are reasonable grounds for believing that the petitioner is not guilty of the offence alleged, which is the test which is required to be satisfied under Section 37 (1) (b)(ii) of the said Act. It is stated that so far no charge sheet has been submitted. As and when charge sheet is submitted and if different facts transpire at that time, the petitioner can always move the Court again on the basis of the then existing material.

Under the above circumstances, this application is rejected.
